

Proposed Revisions to
Local Bankruptcy Rules
and
Local Bankruptcy Forms

October 1, 2015

This document contains proposed revisions to the December 1, 2014 version of the Local Bankruptcy Rules for the District of Oregon and proposed revisions to various Local Bankruptcy Forms. A majority of the proposed revisions were recommended to the Court by the Oregon State Bar Debtor-Creditor Section Local Bankruptcy Rules and Forms Committee. Explanatory notes follow each proposed change.

Proposed new language is in **redline text**. Proposed language to be deleted is in ~~strikeout text~~.

Note: A small number of local rules and forms are being updated to accommodate changes in the Federal Rules of Bankruptcy Procedure (e.g., 1007) and the Official Bankruptcy Forms, which will take effect December 1, 2015. As these changes are merely technical in nature (typically switching from a form identifier with 3 characters to one with 4 characters, or reflecting new combined bankruptcy schedules), they will not be enumerated in this document.

Please [click here](#) to submit comments concerning the proposed revisions or e-mail comments to LBRcomments@orb.uscourts.gov. Any comments must be received on or before October 30, 2015 in order to be considered. After reviewing any comments, the Court will post the final revised rules and forms which will take effect on December 1, 2015 unless otherwise noted.

Local Bankruptcy Rules & Forms Proposed Revisions

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Rule 2016-1. Compensation for Services Rendered & Reimbursement of Expenses.

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- (h) **Secured Creditor Expenses.** In this subdivision the term “expense” includes the costs of insurance, taxes paid, attorney fees, appraisal fees, and inspection fees.

...

(2) Chapter 12 or 13.

(A) Inclusion of Expenses in Proof of Claim.

...

- (iii) **Postpetition and Preconfirmation.** Except for expenses incurred in connection with a claim described in FRBP 3002.1(a), ~~E~~either: (I) include postpetition, but preconfirmation, expenses in an initial or amended proof of claim, or (II) no later than 30 days after entry of the confirmation order, file an initial or amended proof of claim. The part of the claim attributable to postpetition and preconfirmation expenses must be clearly identified. ~~If the creditor incurs the requested expense in connection with a claim described in FRBP 3002.1(a), the creditor must comply with FRBP 3002.1.~~

- (iv) **Postconfirmation.** Except for expenses incurred in connection with a claim described in FRBP 3002.1(a), ~~N~~no later than the 90th day before the debtor is scheduled to make the final plan payment, file an initial or amended proof of claim that clearly identifies the requested expenses incurred after plan confirmation. If the creditor incurs the requested expense in connection with a claim described in FRBP 3002.1(a), the creditor must ~~also~~ comply with FRBP 3002.1.

- (B) **Disclosure of Preservation of Expense Claim After Discharge.** Except for expenses incurred in connection with a claim described in FRBP 3002.1(a), ~~A~~a creditor that asserts a right to expenses as part of its secured claim, but does not request payment of those expenses by the trustee, must disclose its claimed entitlement to payment of the expenses either by filing and serving on the debtor a notice of the expense claim, or by including the expense claim in the creditor’s proof of claim. A secured creditor may elect to include some expenses in its proof of claim, and other expenses in a notice. ~~If the creditor incurs the requested expense in connection with a claim described in FRBP 3002.1(a), the creditor must comply with FRBP 3002.1.~~

- (i) **Information Required in a Notice.** ~~The creditor~~ **A notice provided pursuant to (B)** must: (I) state that the creditor asserts the right to expenses as part of its secured claim and does not request payment by the trustee, and (II) set forth the amount of the claim for expenses to the extent known at the time the notice is filed and any interest rate charged on accrued expenses.
- (ii) **Deadline to Give Notice.** A creditor that asserts a claim for prepetition expenses must give notice of its claim by the deadline for that creditor to file a proof of claim. **Except for expenses incurred in connection with a claim described in FRBP 3002.1(a),** ~~A~~ a creditor that asserts a claim for postpetition expenses must make its disclosure no later than the 90th day before the debtor is scheduled to make the final plan payment. If the creditor incurs the postpetition expense in connection with a claim described in FRBP 3002.1(a), the creditor must ~~also~~ comply with FRBP 3002.1.

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- (D) **Deadline for Objection to Claim for Expenses.** **Except for expenses incurred in connection with a claim described in FRBP 3002.1(a),** ~~A~~ an objection to a secured creditor's expenses must be filed no later than 60 days before the final plan payment is due under the plan. **If the creditor incurs the requested expense in connection with a claim described in FRBP 3002.1(a), an objection to the expenses must be filed within the time limits provided by FRBP 3002.1.**

Note

In certain circumstances, the deadlines and procedures set forth in LBR 2016-1(h)(2) may conflict with the FRBP 3002.1 procedures for certain holders of secured claims; the proposed revisions to LBR 2016-1(h)(2) make clear that compliance with the FRBP 3002.1 procedures is both required and will not result in a violation of the LBR 2016-1(h)(2) procedures.

Rule 3010-1. Small Dividends and Payments.

- (a) Chapter 7 Cases.** In a chapter 7 case, the trustee is authorized to distribute dividends to any creditor in amounts less than five dollars (\$5.00).
- (b) Chapter 12 and Chapter 13 Cases.** In a chapter 12 or 13 case, the trustee is authorized to distribute payments to any creditor in amounts less than fifteen dollars (\$15.00).

Note

FRBP 3010 prohibits the distribution of small dividends absent local rule or court order. In some cases, the procedures for turning over small dividend payments are more burdensome than making disbursements of small dividends; in the interest of efficient case administration, Chapter 7 trustees have requested authorization to make small dividend payments.

Rule 4001-1. Relief From Automatic Stay; Use of Cash Collateral; Obtaining Credit; Agreements; Rental Cure Deposits.

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- (c) **Motion for Authority to Use Cash Collateral, or for Authority to Obtain Credit.** A motion must be filed under LBF 541.5.

~~(1) — **General.** A motion must be filed under LBF #541.50.~~

~~(2) — **Preliminary or Emergency Hearing.** When a preliminary or emergency hearing is necessary, the motion must be filed under LBF #541.51.~~

Note

The procedures for Motions for Authority to Use Cash Collateral or Obtain Credit were consolidated into a single document (LBF 541.5); this change reflects that a single document dictates the procedures for these motions.

Rule 7001-1. Adversary Proceedings—General.

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Cross-references:

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Jury Trial - LBR 9015-1 and LR 2100-8.

Note

Updated cross-reference to particular Local Rule provision addressing jury trials.

Rule 7007-1. Motion Practice–Adversary Proceedings.

(a) Prefiling Conference Certification.

- (1) The first paragraph of a motion, except one for a temporary restraining order, must certify that ~~either~~ **one of the following is true:**
- (A) The parties made a good-faith effort ~~through personal or telephone conferences~~ to resolve the dispute and have been unable to do so, **including a description of the efforts made;-**
 - (B) The movant made reasonable efforts to confer and the opposing party **either refused to confer or did not respond to movant's request(s),** including a description of the efforts made;-
 - (C) The movant or opposing party is a prisoner not represented by an attorney;-
or
 - (D) **The movant conferred with the opposing party and the opposing party does not object to the relief sought in the motion.**

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Cross-references:

...

Objection to Cost Bill - LBR 9021-1(d)(3)(A)

Notes

After review of the certification requirements and local practice, a few primary areas of concern were noted. For one, under the current rule, actual conferral by electronic communication was insufficient to meet the conferral requirement; the proposed revisions to the rule allow for conferral to occur by any medium. For another, the current rule did not require a description of the efforts; the proposed revision requires a description of attempts so that the Court is better informed as to what is considered to be a good-faith effort.

Also, consistent with the proposed change to LBR 9021-1(d)(3)(A), *infra.*, a cross-reference has been added; see Note to proposed change to LBR 9021-1(d)(3)(A).

Rule 7016-1. Pretrial Procedure–Proposed Pretrial Order.

If the court requires a pretrial order, then LR 2100-8 (~~re jury trials~~), LR 16-2, and LRs 16-5(b), (c) and (d) apply, but any reference to a magistrate judge must be read as a reference to a bankruptcy judge.

Note

Updated cross-reference to particular Local Rule provision addressing jury trials and removed then-redundant parenthetical.

Rule 7033-1. Interrogatories.

LR 33 applies; but any reference to LR 7-1(a) must be read as a reference to LBR 7007-1(a).

Note

Revised to incorporate the LBR's conferral requirements rather than the LR's requirements.

Rule 9010-1. Attorney–Notice of Appearance & Representation of an Organization.

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(e) Limited Scope Representation and Withdrawal of a Chapter 7 Debtor’s Attorney Upon Full Performance of Agreed Upon Services in an Individual Chapter 7 Case.

- (1) Required to be Covered and Included in Fee Agreement re-Required Services.** An attorney who agrees to represent a debtor, but not represent the debtor in all matters relating to a case, must enter into a written fee agreement with the debtor that includes a detailed description of all services the attorney will perform on behalf of the debtor. Before the debtor signs the fee agreement, the attorney must provide written disclosures that clearly explain to the debtor additional duties the debtor may be required to perform without the attorney’s assistance and the associated risks. The debtor must sign and date an acknowledgment of receipt of the disclosures. At a minimum, the agreement must provide that the attorney will perform the following services:

...

- (D)** Assist with all matters up to and through conclusion of the meeting of creditors, **including informing the debtor of key deadlines, such as objecting to discharge, which may occur after the meeting of creditors.** Adversary proceedings, however, may be specifically excluded from the agreement.

...

- (F)** **Assisting and responding to requests for information and documents from the Chapter 7 case trustee, including responding to motions for turnover.**

Note

These changes to LBR 9010-1 incorporate some of the recommendations of a subcommittee working group addressing issues regarding scope of representation and the Bankruptcy Appellate Panel’s decision in *In re Seare*, 515 B.R. 599 (9th Cir. B.A.P. 2014).

While the subcommittee was leery of addressing specific services because it felt this would merit lengthier analysis, discussion & consideration, there was general agreement that debtor’s attorneys should assist in getting documents to the trustees as they are subject to sanctions if they fail to assist. See, e.g., *Starky v. Birdsell (In re Starky)*, 522 B.R. 220 (9th Cir. B.A.P. 2014).

It is anticipated that Practice Tips (under LBR 1001-1(e)) regarding representation will be added to provide additional information regarding Limited Scope representation. The subcommittee felt that adding in a requirement that limited scope agreements include responding to US trustee investigations would be too controversial. Nonetheless, the practice tip will note that, regardless of what an attorney's fee agreement says, unless and until an attorney has gotten an order permitting withdrawal, the attorney remains responsible for assisting the debtor in all such matters (except for adversary proceedings, but including contested matters).

Rule 9013-1. Motion Practice—Contested Matters.

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Cross-references:

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Objection to Cost Bill - LBR 9021-1(d)(3)(A).

Note

Consistent with the proposed change to LBR 9021-1(d)(3)(A), *infra.*, a cross-reference has been added; see Note to proposed change to LBR 9021-1(d)(3)(A).

Rule 9015-1. Jury Trials–Procedures.

- (a) **LR Applicability.** LRs 47, 48, and 51-1(c) and (d)(1), (3)-(6) apply to contested matters and adversary proceedings.

Note

LR 51-1(d)(2) incorporates an email submission procedure unique to the District Court. To the extent that the Bankruptcy Court conducts a jury trial, it is assumed that the Court will provide case-specific instructions for the submission of jury instructions.

Rule 9021-1. Order or Judgment–Entry of; Costs.

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(d) Costs and Fees.

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(3) Objection to Cost Bill.

- (A)** An objection to a cost bill must be filed and served no later than 14 days after the cost bill is served. The objection may be supported by a brief, and any statement of fact must be supported by an affidavit. No later than seven days after service of an objection **and notwithstanding LBRs 7007-1(b)(3)(B) and 9013-1(c)(2)(A)**, the party filing the cost bill may file and serve a reply.

Note

LBR 7007-1(b) provides that no replies are permitted (except for one in support of a motion for summary judgment). The cost bill procedures entail the filing of the cost bill (initiating the matter), an objection (the response to the cost bill), and the proponent's reply to the response; in order to avoid inconsistency, this provision has been excepted from the applicable LBRs prohibiting replies.

Rule 9029-3. Local Rules–District Court.

LRs 2100-2300 apply to cases and adversary proceedings in this court. The other LRs do not apply unless specifically referred to in an LBR. **If an LBR references a specific LR, the reference incorporates any other LR cross-references within that LR unless stated otherwise.**

Note

Clarifies that the LBR's incorporation of a specific LR also incorporates the LR's referenced therein.

LBF 1351.5 - Motion to Terminate Order Directing Chapter 13 Payment to Trustee; and Order Thereon

UNITED STATES BANKRUPTCY COURT
DISTRICT OF OREGON

In re)
) Case No. _____
)
) MOTION TO TERMINATE ORDER
) DIRECTING CHAPTER 13 PAYMENT
Debtor(s)) TO TRUSTEE; **AND ORDER THEREON**

The undersigned, who is the debtor's attorney (or debtor, if no attorney), moves the Court for an order terminating the order directing debtor's employer (or other entity) whose name is _____ and whose service address is _____

for payment to the trustee for the reason that _____.

Employee Name: _____ Social Security # (Last 4 digits) _____

Trustee (mark one) ☐ consents ☐ does not consent to the termination of the wage order.

Signature

OSB# (if Attorney)

Type or Print Name

IT IS ORDERED that any previously entered order directing chapter 13 payments to the trustee is now terminated, and that the debtor's employer (or other party) named above shall discontinue making payments to the trustee and shall now pay all net wages earned directly to the debtor.

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1351.5 (12/1/12⁵)

Note

Modification made to indicate whether or not the trustee has consented to the termination.

LBF 1307 - Application by Debtor's Attorney for Supplemental Compensation; and Order and Notice Thereon

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Current Paragraph 5:

5. Allowance of this application will require that the distribution to creditors be reduced, the debtor pay more, or a combination of the two. Even if the distribution to creditors is not reduced, payments to creditors may be delayed, sometimes for an extended period. If the debtor must pay more, the debtor will either be required to make additional or increased plan payments. If you want to know what impact the allowance of this fee application will have on you, you should contact the attorney whose contact information is above. The attorney is required to explain the impact on you of the allowance of the additional compensation within seven days after you request the information.

Proposed Paragraph 5:

5. Allowance of this application will (mark all that apply):

- ☐ **not affect the distribution to creditors.**
- ☐ **not change the length of the plan which is estimated at _____ months.**
- ☐ **change the length of the plan from an estimated _____ months to an estimated _____ months.**
- ☐ **delay the distribution to creditors by approximately _____ months.**
- ☐ **reduce the distribution to general unsecured creditors from an estimated ____% to an estimated _____%.**
- ☐ **require that the debtor pay more, either by additional or increased plan payments sufficient to pay the additional fees.**
- ☐ **other: _____.**

Note

Modification made to require the applicant to indicate the economic impact on creditors if the fees are approved.